

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3760
)	EEOC NO.: 21BA82408
SIMONE CHONG)	ALS NO.: 09-0720
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Simone Chong's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2008CF3760; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 11, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged that Rotary International ("Employer") subjected her to a hostile work environment (Count A) and discharged her (Count B) because of her sex, female, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 6, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On December 10, 2009, the Petitioner filed this timely Request.
2. The Petitioner was first hired by the Employer on January 1, 2000, as a business process coordinator in the educational programs divisions. The Employer thereafter promoted the Petitioner three times. The Petitioner's last promotion was to the position of Department Manager of Operations in August 2007.
3. On February 27, 2008, the Employer received a letter from a former employee. The former employee accused the Petitioner of having engaged in various violations of the Employer's

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

employment policies, including falsifying timecards for a temporary employee. The Employer commenced an investigation into the allegations on March 6, 2008.

4. The Employer's investigation focused on timecards approved by the Petitioner and time log entries, building access logs, and payment authorization vouchers which authorized payments to temporary employment agencies, during the time period of November 1, 2006, through September 10, 2007.
5. On May 12, 2008, after concluding its investigation, the Employer determined the Petitioner had falsified the temporary employee's timecards. For that reason, the Employer states it discharged the Petitioner on May 12th.
6. In her charge, the Petitioner alleged in Count A that in or about March 2008, the Employer, via one of its male managers, subjected her to a hostile work environment by verbally attacking her, sending her derogatory emails, telling the Petitioner that he was surprised that she was in a management position, and telling the Petitioner that she should not be talking to him. The Petitioner contended she reported this conduct to the Employer's general manager, who took no action. As to Count B, the Petitioner alleged she was discharged because she is female.
7. In her Request, the Petitioner argues that the Respondent's investigation of her charge was inadequate. The Petitioner contends the Employer did not produce any evidence to substantiate its statement that women make up the majority of its upper level positions. The Petitioner also denied any wrongdoing. She also argued that a male supervisor who had signed invoices for an employee, which permitted the employee to steal computer equipment, was not discharged by the Employer.
8. In its Response, the Respondent asks the Commission to sustain the dismissal of both counts of the Petitioner's charge for Lack of Substantial Evidence. As to Count A, the Respondent found no evidence of a hostile environment motivated by the Petitioner's sex. Although the Petitioner contended that the hostile e-mails from the male manager were in her personnel file, there were no e-mails, and the Petitioner could not otherwise show proof of these e-mails. The Respondent states the Petitioner could not provide it with dates of the alleged events, nor provide any evidence that the events were motivated by her sex. As to Count B, the Respondent found no evidence the Petitioner was terminated because of her sex. The Respondent states that the alleged similarly situated male supervisor identified by the Petitioner was not comparable to the Petitioner because the male supervisor did not sign off on the invoices, nor otherwise participate in or aid the employee's misconduct. The Respondent found no other evidence that the Employer's stated reason for discharging the Petitioner was a mere pretext for sex discrimination.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission concludes that there is a lack of substantial evidence that the Petitioner was subjected to a hostile work environment based on her sex. To create a hostile environment based on sex, the misconduct must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment, and there must be evidence the conduct was motivated by the Petitioner's sex, i.e., that if she had been a man, she would not have been subjected to the alleged conduct. See Motley v. The Illinois Human Rights Commission, et al., 263 Ill.App.3d 367, 636 N.E.2d 100, 200 Ill.Dec. 909 (4th Dist. 1994); see also In re Request for Review of Lula Dillard, IHRC, Charge No: 1990CF3737, 1994 WL 880297 (December 23, 1994).

Taking as true that in March 2008 the male manager engaged in the conduct as the Petitioner alleged, there is no substantial evidence this conduct was motivated by the Petitioner's sex. In fact, there has been no evidence at all presented from which a reasonable mind could conclude the male manager's conduct—nor that of the general manager who allegedly took no action on the Petitioner's complaint about the male manager—was motivated by the Petitioner's sex. As such, there is no substantial evidence of a hostile environment based on the Petitioner's sex.

As to Count B, the Commission finds no substantial evidence the Employer discharged the Petitioner because of her sex. There is no evidence to support a *prima facie* case of sex discrimination because there is no evidence that a similarly situated male supervisor who had engaged in fraudulent practices was not fired by the Employer for his misconduct. Further, assuming *arguendo* the Petitioner could establish a *prima facie* case of sex discrimination, there is no substantial evidence that the Employer's articulated non-discriminatory reason for discharging the Petitioner was a mere pretext for sex discrimination.

The Employer discharged the Petitioner after an investigation by which it determined the Petitioner had falsified timecards. While the Petitioner denies having committed any wrongdoing, an Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness is not important as long as there was a good faith belief by the Employer in its decision. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May 6 1996), citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986).

The Petitioner contended in her Request that there was evidence of pretext because a male supervisor had signed invoices which permitted a subordinate employee to steal computer equipment. However, there was no evidence the male supervisor had signed any invoices or had otherwise aided the subordinate employee in any misconduct. As such there was no evidence a comparable male supervisor had been treated more favorably than the Petitioner under similar circumstances. Therefore, in the absence of any evidence that the business consideration relied upon by the Employer was a pretext for discrimination, the Commission cannot substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Rotary International, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 23rd day of June 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen